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09/762,396	03/16/2001	Rainer Anderlik	49256	3913

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Keil & Weinkauff
1101 Connecticut Ave NW
Washington, DC 20036

EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 06/06/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

09

Application No.

762396

Applicant(s)

ANDER LK et al

Examiner

NEIL Gory

Group Art Unit

16/6

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 2/14/03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-16 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-16 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Receipt is acknowledged of substitute specification of 2/14/03.

This included blank page # 16; it has been removed, and page 17 renumbered 16. The amendment of 2/7/01, preliminary amendment A was entered. Amendment B of 9/11/02, was then entered; so claims 1, 4-7, 10, 12, 15 and 16 are amended. Claims 3, 11, 13 stand as amended in 2/7/01.

Claims 2, 8, 9 and 14 stand as submitted in preliminary amendment, and on 2/14/03; that copy of all claims is thus a correct copy of the 16 pending claims.

The abstract of 9/11/02 is also pending.

Thank you!

Applicant's election with traverse of species of odorant polymer, of claim 8- no election of process of defense, altering odor, or improving air quality, was entered in Paper No. 10. The traversal is on the ground(s) that there is no anticipation, as claimed by examiner, and all forms require this function and technical feature. This is not found persuasive because Examiner finds that the arguments for unity of invention are persuasive, and thus the various modalities and uses are considered to be equivalents of each other, with election requirement withdrawn.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The rejection of record is maintained to the following extent. It is unclear whether or not "rubbery" refers to cross-linked plastics-applicants remarks referred only to the thermoplastic. Please clarify, or show where support lies for cross-linked rubbery plastic.

Claim 7 requires one of polylacticacid or polyurethanes orterephthalates, while also requiring any one of the above to be a polymer, or copolymer orgraft copolymer consisting of one styrene or butadiene oracrylic esters and also to include polycarbonates mixed with the polylactic acid, etc. Polymer.

It is unclear that, for instance, the polylactic acid would consist of styrene, butadiene acrylonitrile or (meth) acrylic monomers. Please amend, if this interpretation of claim 7 is ~~correct~~^{correct}, or point to support. Claim 10, 12, 15, 16 do not identify limitations for one to know when the meets and bounds of the claim are met-at 10; how does one know when, where and how to apply for what manner of defense against what animal; at 12, how does one "improve" odor properties, and when is such improvement attained? At 15 how does one utilize the article, and how is air quality improved? At 16 how is the article used to defend against pests of animals? The claims insufficiently describe the intended limitations for one in the art of animal defense or of parasite control of dogs, cows, etc., or of air pollution control, to know what to do to meet these limitations.

Claims 1-16 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kubanek et al GB 2194791.

The rejection of record is maintained. The 8-16 claims are to products/polymers or plastics, and applications there of. The process, as claimed in claim 1, has not been shown by applicant to be critical to the making of the products, thus it is the product itself given patent able weight, not the process of production. Claim 8 is an odorant plastic. Example 1 shows a 2 polymer plastic incorporating an odorant, the instant animal pest protectant, eucalyptus oil, effective against animal, Mosquitoes, in pellet (rod) form. Molding composition, (claim 11) using plastic scented intermediates are disclosed at col. 1, top of page 2. Improvement consists of very slow release. Articles include (p.2, last paragraph) cups, trays, soap holders (claim 13). These articles improve air quality, by providing pleasant scent (p.2, first paragraph.)

The process of claim 1, although not in so many words by Kubanek, is disclosed by Kubanek as the claimed polymers, thermoplastics, powders (example 1) are mixed with odorants-time elapses, thus swelling occurs, eventhough ~~it~~ ^{is} stated, since the polymer and odorants are as instantly claimed. Next, a second, different polymer is mixed; example 5, inclusive of polymers of styrene monomers. Preparation at high pressure at about room temperature is indicated at col.1, top of page 2. Closed containers, are at lines 97-101, p.2. Ecomones include ^{citrus} limonene (example 2, 3) aldehydes and ketones (example 1). Since the claimed polymers are mixed as in Kubanek, the first and second Tg are also the same, although not specified by Kubanek.

Claims 1-3, 6-16 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Pougalan et al. 4734278.

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See example 1; the instant thermostat thermoplastic resin, in fine particle-or comminuted (granular) form are mixed with floral perfume oil, allowed to swell, and added, as a plastic base, to EVA and PVC (col.3, lines 50-54), materials having a lower Tg than that of the PEBAX first polymer. Animal attractants/repellent odorants (col.1, line 21-23), the instant unspecified pheromone/ecomones, are invisioned. Closed containers are not specified; pressure at room temperature using powder (granulates) is (example 2). Heating products include odorant polymers and plastics, extruded, thus in pellet form, for application as defense against animals (animal repellent) (col.1, lines 21-23) and animal pests (example 3). Odorizing and deodorizing, to improve air quality, is invisioned (col.3, top). Semifinished articles are invisioned-they can be molded, shaped as desired to provide odor-improved articles.

Applicant's arguments filed 2/14/03 have been fully considered but they are not persuasive. Applicants' arguments have been considered, and rejections withdrawn where persuasive. However, confusion and alternative interpretations skill exist as indicated, and the prior art provides the same products as are instantly claimed, and the same process of preparation, using the same claimed components. However, explicit identification of some of the claimed features, though characteristic of the materials and processes were not mentioned. Applicants claims, in fact do not require the argued for non porous, cross linked polymers. Neither do the claims exclude (they are in open quise) Kubaneks' porous carrier.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone number for the organization where this application or proceeding is assigned is 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy/tgd
May 19, 2003



NEIL S. LEVY
PRIMARY EXAMINER